

FILED	RECEIVED
ENTERED	SERVED ON
COUNSEL/PARTIES OF RECORD	
JUN 25 2009	
CLERK US DISTRICT COURT DISTRICT OF NEVADA	
BY: _____	DEPUTY _____

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

MICHELLE MELLEMA,

Plaintiff,

v.

SECOND JUDICIAL FAMILY COURT
RENO, NEVADA,

Defendant.

3:08-cv-00555-BES-RAM

ORDER

Currently before the Court is Defendant Second Judicial Family Court of the State of Nevada, Family Division's Motion to Dismiss (#8) filed on January 5, 2009. Plaintiff Michelle Mellema ("Mellema") filed a document entitled "Reply to Defendants Motion to Dismiss" (#10) in response on January 15, 2009, and the Second Judicial District Court filed a Reply (#11) on January 16, 2009.

Also before the Court is a Motion for Certificate of Appealability (#13) filed by Mellema on June 10, 2009.

BACKGROUND

Mellema filed a Petition against the Second Judicial District Court of the State of Nevada, Family Division ("Second Judicial District Court") on October 20, 2008. (Complaint (#4)). Therein, Mellema requested that this Court "take jurisdiction" over her post-divorce, child custody and child support case which is pending in the Second Judicial District Court and assigned Case No. DV05-00113. In her petition, Mellema claims that the presiding family court judge has denied her due process rights, and also "refuses [her] victim rights, 14th Amendment rights, as well as others." Id. at 2.

1 On January 5, 2009, the Second Judicial District Court filed the current Motion to
2 Dismiss (#8). In its motion, the Second Judicial District Court argues that Mellema has failed
3 to state a claim upon which relief may be granted because the Second Judicial District Court
4 is immune from suits brought under § 1983 and federal courts do not have jurisdiction over
5 domestic relations cases. In response, Mellema states that the motion to dismiss should be
6 denied because "the case is not a lawsuit, defendant is not a state court but a Washoe County
7 court, the federal district court has jurisdiction since . . . constitutional 14th Amendment rights
8 were violated, due process, parental due process 05, and diversity exists." (Reply to
9 Defendants Motion to Dismiss (#10) at 1).

10 ANALYSIS

11 In considering a motion to dismiss for failure to state a claim under Fed. R. Civ. P.
12 12(b)(6), the court must accept as true all material allegations in the complaint as well as all
13 reasonable inferences that may be drawn from such allegations. LSO, Ltd. v. Stroh, 205 F.3d
14 1146, 1150 (9th Cir. 2000). The allegations of the complaint must be construed in the light
15 most favorable to the nonmoving party. Shwarz v. United States, 234 F.3d 428, 435 (9th Cir.
16 2000). The purpose of a motion to dismiss under Rule 12(b)(6) is to test the legal sufficiency
17 of the complaint. Navarro v. Block, 250 F.3d 729, 732 (9th Cir. 2001). However, there is a
18 strong presumption against dismissing an action for failure to state a claim. See Gilligan v.
19 Jamco Dev. Corp., 108 F.3d 246, 249 (9th Cir. 1997) (citation omitted). Thus, upon being
20 adequately stated, a claim may be supported by showing "enough facts to state a claim to
21 relief that is plausible on its face." Bell Atlantic Corp. v. Twombly, 127 S. Ct. 1955, 1969
22 (2007) (citation omitted).

23 While a complaint need not plead "detailed factual allegations," the factual allegations
24 it does include "must be enough to raise a right to relief above the speculative level." Id. at
25 1964-65. "The pleading must contain something more ... than ... a statement of facts that
26 merely creates a suspicion [of] a legally cognizable right of action ." Id. at 1965. Applying
27 these principles, the Court now considers whether Mellema's claims survive the Second
28 Judicial District Court's Motion to Dismiss.

1 As noted, Mellema's petition alleges that the Second Judicial District Court violated her
2 due process rights and other constitutional provisions. The Second Judicial District Court first
3 argues that it is entitled to an order dismissing Mellema's case because it is immune from suit
4 under 42 U.S.C. § 1983.

5 A person who, acting under of color of law, deprives another of a constitutional right is
6 liable to the party injured pursuant to 42 U.S.C. § 1983. The United States Supreme Court
7 has held that "neither a State nor its officials acting in their official capacities are 'persons'
8 under § 1983." Will v. Michigan Dept. of State Police, 491 U.S. 58, 71 (1989). As such, suits
9 brought against a state entity for constitutional violations under § 1983 are subject to
10 dismissal. See Wolfe v. Strankman, 392 F.3d 358, 364 (9th Cir. 2004)(holding that a state is
11 not a proper party to a suit under § 1983); Flint v. Dennison, 488 F.3d 816, 824 (9th Cir.
12 2007)(stating that states and governmental entities that are considered arms of the state are
13 not persons under § 1983).

14 Based on the foregoing, dismissal is appropriate in this matter because Mellema's
15 petition against the Second Judicial District Court alleges constitutional violations under §
16 1983. However, the Second Judicial District Court is a state entity and is not a proper party
17 to a suit brought pursuant to § 1983.¹

18 In addition, Mellema's petition requests that this Court take jurisdiction over her post-
19 divorce, child custody and child support case currently pending in the Second Judicial District
20 Court.

21 "Family relations are a traditional area of state concern." H.C. ex rel. Gordon v. Koppel,
22 203 F.3d 610, 613 (9th Cir. 2000). In regard to domestic matters, federal courts have no
23 general jurisdiction, and state courts have "a special expertise and experience." Id. (citing
24 Ankenbrandt v. Richards, 504 U.S. 689, 697-701 (1992) and Hisquierdo v. Hisquierdo, 439
25 U.S. 572, 581 (1979)). As a result, "it is well recognized that the federal courts must decline

26
27 ¹ Mellema's argument that the Second Judicial District Court is "not a state court but a Washoe
28 County court" is without merit. Although the Second Judicial District Court sits in Washoe County, it
is a State Court created pursuant to Art. 6 § 1 of the Constitution of the State of Nevada. See State ex
rel. Coffin v. Com'rs. 19 Nev. 332, 10 P. 901 (Nev. 1886).

jurisdiction of cases concerning domestic relations when the primary issue concerns the status of parent and child or husband and wife.” Buechold v. Ortiz, 401 F.2d 371, 372 (9th Cir. 1968). In Buechold, the court noted a quote by Justice Holmes on this issue: “It has been understood that, ‘the whole subject of domestic relations of husband and wife, parent and child, belongs to the laws of the states and not to the laws of the United States.’” Id.

Here, Mellema’s request that this Court take jurisdiction over a domestic relation case pending in the Second Judicial District Court is denied. This Court lacks the authority to take jurisdiction over a pending state family law case. In addition, this Court does not have subject matter jurisdiction over the domestic relation issues asserted in that case.

Finally, Mellema’s request for a certificate of appealability is denied. Mellema may file a notice of appeal of this order as established by the Federal Rules of Appellate Procedure.²

CONCLUSION

For the foregoing reasons, IT IS ORDERED that Defendant Second Judicial District Court of the State of Nevada, Family Division’s Motion to Dismiss (#8) is GRANTED.

IT IS FURTHER ORDERED that Plaintiff Michelle Mellema’s Request for Certificate of Appealability (#13) is DENIED.

DATED: This 25th day of June, 2009.


United States District Judge

² Specifically, Rule 3 of the Federal Rules of Appellate Procedure states that: “An appeal permitted by law as of right from a district court to a court of appeals may be taken only by filing a notice of appeal with the district clerk within the time allowed by Rule 4.” FRAP 3(a)(1).